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*Before the*  
**RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION  
U.S. DEPARTMENT OF TRANSPORTATION**

FEBRUARY 29, 1988  
WASHINGTON, DC

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*Comments of*  
**AMERICAN TRUCKING ASSOCIATIONS, INC.**  
*On*  
**CALIFORNIA DEPARTMENT OF MOTOR VEHICLES  
APPLICATION FOR INCONSISTENCY RULING**

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**RSPA Docket No. IRA-42**  
**Federal Register [52 Fed. Reg. 49107]**

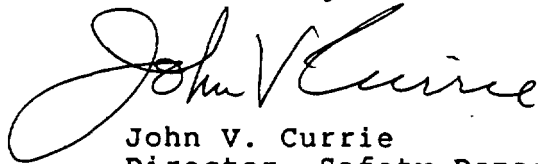


## FOREWORD

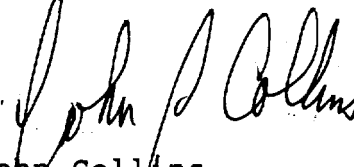
The American Trucking Associations (ATA) with offices at 2200 Mill Road, Alexandria, VA 22314, is a federation with affiliated associations in every state and the District of Columbia. In the aggregate, ATA represents every type and class of motor carrier operation in the country, both for-hire and private. ATA represents companies with large fleets of trucks, as well as owner operators with one truck.

The ATA Safety Department reviews legislative and regulatory proposals, coordinates the solicitation of industry views, and develops and submits, in rulemaking proceedings, comments reflecting trucking industry policy. It has established policies and programs to enhance the performance of commercial drivers and to improve licensing systems for such drivers. In addition, the Safety Department develops educational programs and materials which assist motor carriers in meeting their responsibilities for safe operations and compliance with regulations.

### Issue Managers:



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American Trucking Associations, Inc. (ATA) is pleased to comment on the request by the California Department of Motor Vehicles for an inconsistency ruling. The request, IRA-42, asks whether the state's training, testing and certification requirements for drivers of vehicles transporting hazardous materials are preempted by Federal law.

This request was published in the Federal Register on November 16, 1987 and comments are due by February 29, 1988.

#### I. CALIFORNIA REQUIREMENTS

The California requirements provide that each driver of a truck carrying hazardous waste or hazardous materials in placarded quantities in California must receive special training in the handling of such materials. The driver must also demonstrate certain levels of knowledge and skills related to the transportation of hazardous materials.

The California requirements allow employers to be authorized to issue certificates of training and certificates of experience. An authorized employer can issue a certificate to a driver that can be used by the driver for 30 days. After this period, the

state will issue a Non-Resident Special Certificate based on the training and testing of knowledge and skills conducted by the authorized employer.

If a driver does not work for an authorized employer, the driver would have to be tested for skills and knowledge by an official designated by California, presumably located in California.

## II. ATA COMMENTS

### A. Intrastate Transportation

ATA defers to the California Trucking Association for the impact of these regulations on intrastate transportation by an intrastate motor carrier in California.

### B. Interstate Transportation

As to interstate transportation, ATA supports uniform national regulations which enhance the safe transportation of hazardous materials in a cost-effective manner. We believe that a unilateral action by any state to impose driver training, testing, and certification requirements are inconsistent with, and preempted by, the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR).

Moreover, while not part of the RSPA review process, we believe that such regulations pertain to commercial motor vehicle safety and are more stringent than the applicable Federal regulations. They should be preempted under section 208 (c)(4), of the Federal Motor Carrier Safety Act of 1984 (49 USC § 2507 (c)(4)).

Finally, section 12009(a)(14) of the federal Commercial Motor Vehicle Safety Act of 1986 (49 USC § 2708(a)(14)) requires California to allow drivers possessing a valid commercial driver's license (CDL) with a hazardous materials endorsement from any state to operate a vehicle transporting hazardous materials in California. Any action by California to impose additional CDL requirements on out-of-state drivers should lead to funding sanctions against the state by the Federal Highway Administration (FHWA).

We believe that a more productive approach for California is to continue to participate in the development of FHWA's national CDL requirements dealing with hazardous materials transportation. California's concerns can be accommodated within the CDL system. Moreover, it can be done in a manner that promotes uniformity rather than destroys it.

We are providing a copy of these comments to California and to the Administrator of FHWA to advise them of our concerns. The remainder of these comments will deal exclusively with the HMTA

inconsistency process.

C. Inconsistency Under the HMTA and HMR

RSPA has incorporated into its procedures (49 CFR 107.209(c)) the following criteria for determining whether a state requirement is consistent.

Whether compliance with both the non-Federal requirement and the Act or regulations issued under the Act is possible. (Conflict test)

The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act. (Obstacle test)

As described by RSPA in IR-22 (City of New York Regulations Governing Transportation of Hazardous Materials, 52 F.R. No. 235, p. 46574), the

"obstacle" test requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through OHMT's regulatory program.

IR-22 goes on to describe the objectives of Congress in the following terms.

Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption

language in section 112(a) "in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation". (emphasis added, citations omitted, at 46574.)

We will discuss the California regulations in the light of these standards. We consider the California regulations to be a single set of requirements because they implement a single regulatory scheme. If any part of the scheme is inconsistent, the entire regulation should be found inconsistent.

1. Lack of Uniformity.

The California requirements are not part of a system of uniform national standards. Uniformity is important to the safe interstate transportation of hazardous materials because a motor carrier in interstate transportation must travel through many jurisdictions. If the hazardous materials regulations differ from jurisdiction to jurisdiction, the motor carrier cannot hope to comply- or even keep aware of- the various requirements.

If California were allowed to create its own system, other jurisdictions would be likely to develop their own, unique regulations. For instance, the City of New York already has its own different driver qualification standards (which ATA has challenged in IRA-40A.) If each state or local jurisdiction were able to create its own unique driver standards, it would create such a multiplicity of different regulations that they would

interfere with compliance with the HMR and reduce safety.

For example, 49 CFR § 177.800 describes that the purpose of parts 170-189 is "(t)o promote the uniform enforcement of law and to minimize the danger to life and property". The regulations proposed by California are above and beyond the HMR requirements. This lack of uniformity is an obstacle to uniform enforcement of law which is the goal of the HMR. It is therefore inconsistent with the HMR.

Another part of the same section requires carriers to "thoroughly instruct employees" in the HMR (49 CFR 177.800). The provisions of section 100.07 of California's regulations create a number of additional requirements for training of drivers, but these requirements do not add clarity, they merely serve as a trap for the unwary.

For example, the California regulations establishes a minimum training requirement of "driving and parking rules applicable to hazardous materials transportation". This kind of regulation adds nothing to the HMR and, in the words of IR-8, State of Michigan Rules and Regulations Affecting Radioactive Materials Shipments, 49 Fed. Reg. 46632 at 46640, "are redundant, do not further transportation safety and represent the type of multiplicity which Congress sought to preclude by enacting the HMTA." The California regulations create an obstacle to compliance with the HMR and HMTA, are inconsistent, and should be



preempted.

The California regulations would also prohibit experienced drivers who are allowed by USDOT to drive vehicles transporting hazardous materials anywhere else in the country from operating vehicles in California. This lack of uniformity is an obstacle to compliance with the HMR, especially § 177.800, and is therefore inconsistent with the HMR.

## 2. Delays

The California regulations would create delays in the transportation of hazardous materials. A driver of a vehicle containing hazardous materials will be stopped in California if he does not have evidence that he has been trained and tested in accord with California's unique requirements. Any vehicle stopped will be delayed.

There are more than 3 million drivers of commercial vehicles in the United States. Except for drivers who never transport hazardous materials or do not ever drive in California, each of these drivers would have to be trained and tested to meet California's requirements. This poses real problems for the majority of drivers affected and will lead directly to delays in transportation.

First, drivers who are owner-operators are self-employed and

so would not be able to turn to an employer for training, testing and certification. An owner-operator based outside of California would either have to make a special stop in California or delay the transportation of hazardous material while the owner-operator is trained and tested. Depending on California's specific requirements, the training could take days or weeks.

Second, motor carriers that transport cargo in California irregularly would not want to go through the cost and record-keeping which is required by California to become an employer authorized to train, test and certify drivers. Therefore their drivers would also have to make a special stop or delay the transportation of hazardous material.

Each such delay is in direct conflict with the provisions of 49 CFR § 177.853 that mandate that highway shipments of hazardous materials be transported without unnecessary delay. Such delay is also an obstacle to compliance with the HMR. As decided by OHMT in IR-22, "hazardous materials transportation delays . . . constitute an independent basis for finding [regulations] to be inconsistent with the HMR." Ibid., at 46584. Therefore, the regulations should be preempted.

#### C. Unfettered Discretion

The California regulations do not provide clear standards whether a driver has been adequately trained (100.02), whether an

employer has provided adequate training (100.06), or whether an employer number should be suspended (100.10). The regulations give a state official "unfettered discretion" to make case-by-case decisions that might prove inconsistent with the HMTA and the HMR.

In affirming IR-8, the RSPA Administrator found that "unfettered discretion" was a basis on which to find inconsistency (IR-8 (Appeal) 52 Fed. Reg. 13000, at 13003). It should also be a basis for a finding of inconsistency here.

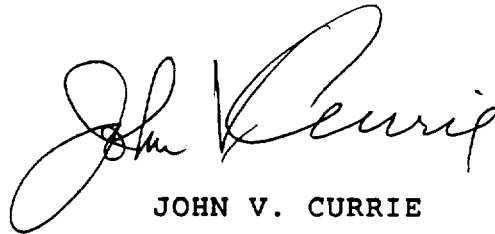
### III. CONCLUSION

As to the interstate transportation of hazardous materials, the California regulations create an obstacle to compliance with the HMTA and the HMR. Moreover, the regulations directly conflict with the HMR because of the delay that they would create. They are also inconsistent because they give state officials unfettered discretion.

OHMT should, therefore, find that the California regulations are inconsistent with the HMTA and HMR and preempted.

CERTIFICATE OF SERVICE

I certify that copies of this comment have been sent to Mr. Pierce at the address specified in the Federal Register.

A handwritten signature in cursive script, reading "John V. Currie". The signature is written in dark ink and is positioned above the printed name.

JOHN V. CURRIE